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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Center For Medical Surgical Hair Restoration. P.C.

Serial No. 74/606,357

Maria Franek of Brooks & Kushman for Center For Medical Surgical Hair Restoration, P.C.

David H. Stine, Trademark Examining Attorney, Law Office 103 (Kathryn Erskine, Managing Attorney).

Before Sams, Cissel and Seeherman, Administrative Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On December 2, 1994, applicant applied to register the mark "LASERGRAFT" on the Principal Register for "surgical hair transplantation services." The application was based on applicant's claim of use since October 23, 1994. Submitted as specimens with the application were copies of printed promotional materials which use the mark in connection with applicant's services and explain how the services are rendered.

Registration was refused under Section 2(e)(1) of the Act on the ground that the term sought to be registered is

merely descriptive of the services recited in the application.

Applicant responded to the refusal to register with argument that "LASERGRAFT" is not merely descriptive of its services, but is instead only suggestive of them.

The Examining Attorney was not persuaded by applicant's arguments. He repeated the refusal to register and made it final. Attached to the final refusal were copies of excerpts from two articles retrieved from the Nexis® database of publications. Each article discusses a technique for transplanting hair in which hair is grafted with lasers instead of with scalpels.

Applicant appealed to the Board. No oral hearing was requested, but both applicant and the Examining Attorney filed briefs.

Based on the record in this application, we hold that the refusal to register under Section 2(e)(1) of the Act is proper.

A mark is merely descriptive of the services with which it is used if it conveys information concerning characteristics or features of the services. In re Tekdyne, Inc., 33 USPQ2d 1949 (TTAB 1995); In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). Further, this information must be conveyed immediately and with some degree of specificity or particularity. In re Diet Tabs, Inc., 231 USPQ 587 (TTAB 1986); Plus Products v. Medical Modalities Associates, Inc., 211 USPQ 1199 (TTAB 1981);

Holiday Inns, Inc. v. Monolith Enterprises, 212 USPQ 949 (TTAB 1981); and In re TMS Corp. of the Americas, 200 USPQ 57 (TTAB 1978).

When these principles are applied to the situation in the case at hand, we must conclude that "LASERGRAFT" is merely descriptive of applicant's hair transplantation services because the mark immediately conveys specific information about the services, namely that applicant uses lasers to graft hair.

The only evidence applicant has provided which explains its services is the aforementioned promotional specimen. In the very first line, the author, L.D. Castleman, M.D., states that he wants to give the reader "background information on how the LaserGraft™ Hair Center started using laser technology for hair grafting." The text goes on to make it clear that applicant uses a laser to graft one hair at a time. This technique is contrasted with using scalpels to make cuts and slits, which apparently presents several disadvantages. The articles submitted by the Examining Attorney present similar information. Both tout the advantages of grafting with lasers.

This evidence makes it quite clear that making grafts with lasers is a significant feature or characteristic of applicant's hair transplantation services. "LASERGRAFT" immediately conveys this feature or characteristic of applicant's services, so the term sought to be registered is

merely descriptive of them within the meaning of Section 2(e)(1) of the Lanham Act.

Applicant argues that the process it uses is referred to as "micrografting," and that "LASERGRAFT" is not merely descriptive of the service just because "[a]pplicant's "LASERGRAFT" process of micrografting incorporates a laser to drill a hole." (brief, p.3). Applicant contends that the term sought to be registered is "too broad to describe the applicant's services with immediacy and particularity," and that "a significant degree of imagination is required to reach the conclusion that applicant's services are hair transplant services." (brief, p. 4). Further, applicant argues that there is no evidence that its competitors use or need to use the term applicant seeks to register, and that registration of applicant's mark would not prevent these competitors from descriptive use of "'laser' and/or 'graft' and variations thereof." (brief, p.5).

The fact that "micrografting" is a name for the process applicant employs in rendering its service does not mandate the conclusion that "LASERGRAFT" is suggestive of the services rather than merely descriptive of them. There may be a number of generic or descriptive terms used in connection with a particular service. As noted above, if a term conveys information about a feature or characteristic of a service, it is merely descriptive of that service within the meaning of the Act. This is so no matter how

many terms or combinations of terms fall within this category.

With respect to applicant's argument that imagination is required to conclude from the mark that applicant's services are hair transplant services, the question before us on appeal is not whether one can determine what the service is from looking at the mark in the abstract. Rather, it is whether the mark, when considered in conjunction with the services with which it is used, merely conveys information about the service. In re Bright-Crest, Ltd., supra. As discussed above, the fact that applicant grafts with lasers is significant information in connection with these particular services, and the term sought to be registered clearly communicates this information.

That applicant is the first or the only one to have adopted this descriptive terminology in connection with these services does not make it any less descriptive. In re Mark A. Gould, M.D., et al, 173 USPQ 243 (TTAB 1972), and In re National Basketball Association, 180 USPQ 480 (TTAB 1973). Moreover, applicant's argument that if it were issued a registration for "LASERGRAFT," competitors would not be prevented from descriptive use of any variations of "laser" and "graft" is not well taken. That competitors have the right to use these descriptive terms together is one reason why applicant should not be granted a registration which embodies such a combination of these words.

In summary, the term sought to be registered, "LASERGRAFT," is merely descriptive of applicant's hair transplantation services because it immediately conveys significant information about the services, namely that the grafting is performed with a laser. Accordingly, the refusal to register under Section 2(e)(1) of the Act is affirmed and registration to applicant is refused.

J. D. Sams

R. F. Cissel

E. J. Seeherman
Administrative Trademark Judges
Trademark Trial & Appeal Board